IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 32528 OF 1998

DATED: 23.12.2005

Between:

B.NAGAIAH PETITIONER

AND

The Presiding Officer,

Labour Court-II, 4th floor,

Chandravihar Buildings,

Nampally, Hyderabad and another Respondents

THE HON'BLE SRI JUSTICE N.V.RAMANA

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WRIT PETITION NO. 32528 OF 1998

ORAL ORDER:

The present writ petition was filed challenging the award passed by the Labour Court-II, Hyderabad, in I.D. No.56 of 1994 dated 17.11.1997 insofar as refusing to grant backwages.

The petitioner, a driver in the respondent corporation was suspended from service vide its proceedings dated 7.11.1994 on the charge of driving the vehicle with lack of

anticipation resulting in death of a scooterist and for his failure to follow the traffic rules. The respondent corporation, dissatisfied with the explanation offered by the petitioner, ordered for an enquiry, wherein the petitioner was found guilty of the charges. Based on the findings of the Enquiry Officer, the petitioner was removed from service. Aggrieved by the order of removal, the petitioner raised a dispute before the Labour Court in I.D. No.56 of 1994. The Labour Court on consideration of the matter, passed an award, reinstating the petitioner with continuity of service but without
backwages. Questioning the said award insofar as not granting
backwages, the present writ petition is filed.

Heard the learned counsel for petitioner and learned Standing Counsel for respondent corporation and perused the material available on record, including the award of the Industrial Tribunal.

Learned counsel for petitioner submitted that the Labour Court rightly held that the evidence in the domestic enquiry adduced by the management is not sufficient for holding the petitioner guilty of the charges, and reinstated the petitioner into service, but erred in denying the backwages. He contended that the reason assigned by the Labour Court for denying the backwages that the petitioner has not issued notice to the management in Form K-4 before filing the I.D. and the petitioner was not ready to argue the matter except on two or three occasions, is untenable, and cannot be sustained. He further contended that the observation as regards non-cooperation of the petitioner for disposal of the matter is contrary to record. As regards the issue of filing of Form K-4 application, he placed reliance on judgment of the Apex Court in SHAMBU NATH Vs. BANK OF BARODA.

On the other hand, learned Standing Counsel for respondent Corporation supported the view taken by the Tribunal and contended that having regard to the gravity of charge of committing an accident resulting in death of a scooterist, the petitioner is not entitled to
backwages.

The Tribunal below while reinstating the petitioner denied
backwages on two grounds: (1) Non-issuance of notice under Form K-4, and (2) Non-cooperation of the petitioner while disposing of the I.D.

As regards the point of non-issuance of Form K-4 notice by the petitioner requesting

the management to reinstate him into service is concerned, the Apex Court in Shambu Nath case (cited supra) at para 8 of its judgment, held as under;

> *" In this case the Tribunal completely misdirected itself when it observed that no demand was made by the workman claiming reinstatement after dismissal. When the inquiry was held, it is an admitted position, that the workman appeared and claimed reinstatement. After his dismissal he preferred an appeal to the Appellate forum and contended that the order of dismissal was wrong, unsupported by evidence and in any event he should be reinstated in service. If that was not a demand for reinstatement addressed to employer what else would it convey. That appeal itself is a representation questioning the decision of the Management dismissing the workman from service and praying for reinstatement. There is further a fact that when the Union approached the Conciliation Officer the Management appeared and contested the claim for reinstatement. There is thus unimpeachable evidence that the concerned workman persistently demanded reinstatement. If in this background the Government came to the conclusion that there exists a dispute concerning workman S. N. Goyal and it was an industrial dispute because there was demand for reinstatement and a reference was made, such reference could hardly be rejected on the ground that there was no demand and the industrial dispute did not come into existence. Therefore, the Tribunal was in error in rejecting the reference on the ground that the reference was incompetent. Accordingly this appeal is allowed and the Award of the Tribunal is set aside and the matter is remitted to tribunal for disposal according to law. The respondent shall pay costs of the appellant in this Court. As the reference is very old the Tribunal should dispose it of as expeditiously as possible*

The Apex Court in the above decision has laid down the principle that when the workman was removed from service and challenged the order of removal when he had raised an industrial dispute, there need not be specific request from the workman for reinstatement. It is to be noticed here that the workman is contesting the order of removal, which itself shows that the workman would like to be reinstated

into service. As such, a separate written request for reinstatement as stipulated in Form-K4 is not *sine qua non* before filing the I.D. The Labour Court has not at all adverted to this aspect except making a passing mention that the workman had not issued Form-K4 notice to the management before filing the I.D. Thus, the finding of the Labour Court in this regard deserves to be set aside and accordingly set aside.

Coming to the second ground for denial of backwages is concerned, I have perused the docket proceedings of the Labour Court. The docket proceedings reveal that the I.D. was filed on 19.7.1994 and notices were issued on 12.9.1994 and thereafter the matter had undergone about 18 adjournments and then the respondent corporation filed a counter affidavit. Thereafter, the matter was adjourned either on the request of the counsel appearing for the Corporation or on the ground that the Presiding Officer was on leave. Hence, the observation of the Tribunal that petitioner was not ready except on two or three occasions is not based on the court record and as such, the same cannot be accepted. Therefore, the finding the petitioner has not at all cooperated while disposing of the I.D. is hereby set aside.

For the foregoing reasons, the Tribunal is not justified in denying backwages to the petitioner. Accordingly, the writ petition is allowed. The petitioner, apart from reinstatement with continuity of service as awarded by the Tribunal, is also entitled to backwages. No costs.

N.V.RAMANA,J

23.12.2005

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THE HON'BLE MR JUSTICE N.V. RAMANA

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